

FCC MAIL SECTION

Federal Communications Commission

DA 99-2811

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-145
Table of Allotments,)	RM-9336
FM Broadcast Stations.)	
(Mishicot, Wisconsin and)	
Gulliver, Michigan))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 8, 1999

Released: December 17, 1999

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Bay-Lakes-Valley Broadcasters, Inc. ("Bay-Lakes"), the Commission has before it for consideration the Notice of Proposed Rule Making and Order to Show Cause, 14 FCC Rcd 7193 (1999), requesting the substitution of Channel 234C3 for Channel 234A at Mishicot, Wisconsin, and modification of the license for Station WGBM to specify operation on channel 234C3.¹ Bay-Lakes also requested the substitution of Channel 273C1 for Channel 234C1 at Gulliver, Michigan, to accommodate the channel change at Mishicot. Bay-Lakes filed comments supporting the substitution at Mishicot.² Great Lakes Radio, Inc. filed comments. Reply comments were filed by Roy E. Henderson d/b/a Indian River Broadcasting Company and Bay-Lakes. Bay-Lakes and Great Lakes Radio, Inc. filed a motion to accept supplemental Joint Reply Comments and Supplemental Joint Reply Comments. Roy E. Henderson filed an Opposition to Motion to Accept Supplemental Joint

¹ Bay-Lakes filed a petition requesting the substitution of Channel 234C3 for Channel 234A at Mishicot. To accommodate the upgrade at Mishicot, Bay-Lakes also requested the substitution of Channel 260C1 for Channel 234C1 at Gulliver, Michigan, substitution of Channel 227A for Channel 260A at Manistique, Michigan, and substitution of Channel 292C2 for Channel 260C2 at Rogers City, Michigan. In response to the petition, Ives Broadcasting, Inc. ("Ives"), licensee of Station WHAK at Rogers City, Michigan, filed comments providing an alternate plan which accommodated Bay-Lakes desire to upgrade and allowed Station WHAK to remain on Channel 260C2. Ives proposed the substitution of Channel 273C1 for Channel 234C1 at Gulliver, Michigan, and the substitution of Channel 234C3 for Channel 234A at Mishicot. No other changes to the FM Table of Allotments would be required. Since Bay-Lakes filed comments supporting the alternate scheme proposed by Ives prior to the issuance of a Notice of Proposed Rule Making, no changes have been proposed at Manistique or Rogers City, Michigan.

² Bay-Lakes filed comments and a conditional counterproposal requesting that if the allotment plan proposed in the Notice cannot be adopted, the allotment plan originally submitted by Bay-Lakes, which included the communities of Manistique and Rogers City, be considered.

Reply Comments.

2. Great Lakes Radio, Inc. ("Great Lakes"), licensee of Station WCMM-FM, Gulliver, Michigan, filed comments in response to the Notice which proposes to change its channel of operation. Great Lakes points out that Bay-Lakes has acknowledged its responsibility to reimburse Station WCMM-FM for the reasonable costs in changing frequency. Great Lakes does not object to the channel change but in order to avoid any controversy, submits an itemization of expenses which it will incur in changing its frequency. Great Lakes believes that the Commission will not be drawn into any civil litigation over cost reimbursement if Bay-Lakes prepares and submits a Cost Reimbursement Agreement associated with the involuntary frequency change for Radio Station WCMM-FM

3. Roy E. Henderson d/b/a Indian River Broadcasting Company ("Indian River"), applicant for Channel 260A at Manistique, Michigan, requests that the proposal contained in the Notice be adopted. Indian River further requests that no consideration be given to the Conditional Counterproposal submitted by Bay-Lakes because there is no justification for rejecting the proposal advanced in the Notice for changes at Mishicot and Gulliver. Indian River comments, in response to the request for a Cost Reimbursement Agreement by Great Lakes, that the Commission should adhere to its well established policy of staying out of contractual disputes among parties.

4. In reply comments Bay-Lakes reiterated its commitment to reimburse the licensee of Station WCMM-FM, Gulliver, for the reasonable costs incurred in changing frequencies. Bay-Lakes states that it intends to negotiate in good faith with the licensee of Station WCMM-FM utilizing the Commission's guidelines set forth in Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). Bay-Lakes points out that it did not receive copies of any comments or counterproposals, other than that filed by Great Lakes, and the Commission should, therefore, adopt its proposal to substitute Channel 234C3 for Channel 234A at Mishicot and substitute Channel 273C1 for Channel 234C1 at Gulliver.³

5. We believe the public interest would be served by substituting Channel 234C3 for Channel 234A at Mishicot, Wisconsin, and Channel 273C1 for Channel 234C1 at Gulliver, Michigan. In accordance with Section 1.420(g) of the Commission's Rules we will also modify Bay-Lakes' license for Station WGBM to specify operation on Channel 234C3. Commission policy requires that any party benefitting from a channel change reimburse the affected party. Bay-Lakes has pledged to reimburse Great Lakes for its reasonable costs. We shall also modify the license for Station WCMM-FM, Gulliver, Michigan, to specify operation on Channel 273C1 in lieu of Channel 234C1 in compliance with Commission Rules.

³ After the record closed in this proceeding Supplemental Joint Reply Comments ("joint comments") and a request to accept these comments were filed by Bay-Lakes and Great Lakes notifying the Commission of the resolution of the reimbursement issue. We feel there is no need to consider these comments as they do not provide information of decisional significance in this proceeding. Indian River filed an opposition to acceptance of these comments.

6. Channel 234C3 can be allotted to Mishicot, Wisconsin, in compliance with the Commission's minimum distance separation requirements at Bay-Lakes specified site.⁴ Channel 273C1 can be allotted to Gulliver at Station WCMM-FM's current site.⁵ Canadian concurrence has been received for the allotment of Channel 273C1 at Gulliver.

7. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 31, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

Community	Channel No.
Gulliver, Michigan	273C1
Mishicot, Wisconsin	234C3

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Bay-Lakes Valley Broadcasters, Inc. for Station WGBM, Channel 234A, Mishicot, Wisconsin, IS MODIFIED to specify operation on Channel 234C3 at Mishicot, Wisconsin, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

⁴ The coordinates for Channel 234C3 at Mishicot are 44-22-48 and 87-36-58.

⁵ The coordinates for channel 273C1 at Gulliver are 45-58-01 and 86-29-18.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license for Great Lakes Radio Incorporated for Station WCMM-FM, Gulliver, Michigan, IS MODIFIED to specify operation on Channel 273C1 in lieu of Channel 234C1, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WCMM-FM's license, BLH-920228KC, except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-920228KC, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Bay-Lakes-Valley Broadcasters, Inc., licensee of Station WGBM is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade at Mishicot.

11. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Great Lakes Radio Incorporated
101 Huron court
Negaunee, Michigan 49866

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau